

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THOMAS M. KELLEY,

Plaintiff,

v.

TOWN OF PLYMOUTH, et al.,

Defendants.

C.A. NO. 05-10596-NMG

**ASSENTED-TO MOTION TO ENLARGE TIME
TO RESPOND TO AND MOVE TO QUASH SUBPOENA**

Pursuant to Fed.R.Civ.P. 6(b), the Office of the Inspector General (“IG”) respectfully moves to enlarge the time to respond to a subpoena commanding the Keeper of the Records of the IG, to appear and testify on March 14, 2007, at 10:00 a.m (“Subpoena”). The IG asks that this Court allow it until June 14, 2007, to respond to and move to quash or modify this subpoena pursuant to Fed.R.Civ.P. 45(c)(3)(A). Until recently, Jeremy Silverfine, counsel to the defendants Town of Plymouth and Robert Pomeroy, as Chief of the Plymouth Police Department and Individually (“Defendants”), who served this Subpoena, and Assistant Attorney General Christine Baily, counsel to the IG, have been attempting to resolve their discovery dispute, but have determined that they will not reach an agreement. Attorney Silverfine has provided his assent to this motion. In support of this motion, the IG states the following:

1. On February 7, 2007, the IG filed a Joint Motion for Discovery to Order the Inspector General to Produce an Affidavit and to Issue a Protective Order. On February 12, 2007, Defendants opposed that motion. On February 22, 2007, the IG sought leave to file a reply to that opposition, which was granted by the Court.

2. At that time, AAG Baily and Attorney Silverfine engaged in further discussions to resolve their discovery dispute.
3. On or about March 1, 2007, the IG received by fax the Subpoena. See Subpoena attached as Exhibit A to Affidavit of Christine Baily.
4. By agreement Attorney Silverfine and AAG Baily agreed to stay the execution of the Subpoena and to allow the IG additional time to respond to the Subpoena pending their efforts to resolve to their discovery dispute.
5. Having been unable to reach an agreement, however, the IG now respectfully asks this Court for additional time to move to quash this Subpoena or, in the alternative, to seek a protective order to either (1) modify the Subpoena; or (2) allow the IG to provide an affidavit in lieu of complying with the Subpoena.

For the foregoing reasons and for those articulated in the attached affidavit, the IG respectfully requests that the Court allow this motion to extend time to June 14, 2007, to respond to and move to quash the Subpoena, as set forth above.

Respectfully submitted,

OFFICE OF THE
INSPECTOR GENERAL,

By its counsel,

MARTHA COAKLEY
ATTORNEY GENERAL

/s/ Christine A. Baily
Christine A. Baily, BBO #643759
Assistant Attorney General
Government Bureau
One Ashburton Place, Room 2019
Boston, Massachusetts 02108
(617) 727-2200, extension 2617

June 4, 2007

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THOMAS M. KELLEY,

Plaintiff,

v.

TOWN OF PLYMOUTH, et al.,

Defendants.

C.A. NO. 05-10596-NMG

AFFIDAVIT OF CHRISTINE BAILY

The undersigned hereby deposes and says:

1. I am an Assistant Attorney General and represent the Office of the Inspector General ("IG") in the above-captioned matter.
2. On February 7, 2007, the IG filed a Joint Motion for Discovery to Order the Inspector General to Produce an Affidavit and to Issue a Protective Order. On February 12, 2007, the defendants Town of Plymouth and Robert Pomeroy, as Chief of the Plymouth Police Department and Individually ("Defendants") opposed that motion. On February 22, 2007, the IG sought leave to file a reply to that opposition, which was granted by the Court.
3. At that time, Jeremy Silverfine, counsel to Defendants, and I engaged in further discussions to resolve our discovery dispute.
4. On or about March 1, 2007, I received by fax a Subpoena which commanded the Keeper of the Records of the IG to appear and testify on March 14, 2007, at 10:00 a.m., and to produce and permit inspection and copying of certain documents ("Subpoena"); See Subpoena, dated February 15, 2007, attached as Exhibit A.
5. Attorney Silverfine and I agreed to stay the execution of the Subpoena and to allow the IG additional time to respond to the Subpoena pending our efforts to resolve our discovery dispute.
6. We have been negotiating in good faith since that time. Recently, it has become apparent that we will be unable to reach an agreement.
7. The IG respectfully asks this Court to enlarge the time to respond to and move to

quash the Subpoena, or, in the alternative, to seek a protective order to either (1) modify the Subpoena; or (2) allow the IG to provide an affidavit in lieu of complying with the Subpoena.

8. On June 4, 2007, I received Attorney Silverfine's assent to an extension until September 14, 2007, to respond to the Subpoena.
9. This is the IG's first request for an extension of time to respond to this Subpoena.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS THE 4th DAY
OF JUNE, 2007.

/s/ Christine A. Baily
Christine Baily, BBO #643759
(617) 727-2200, extension 2617

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 05 10596 NMG

THOMAS KELLEY,
Plaintiff,

VS.

TOWN OF PLYMOUTH and
ROBERT J. POMEROY, as Chief of the
Plymouth Police Department and
Individually,
Defendants.

DEPOSITION SUBPOENA DUCES TECUM

TO: Keeper of Records
Office of the Inspector General
Greg Sullivan
One Ashburton Place, Room 1311, 13th Floor
Boston, MA 02108


GREETINGS:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 30 and 45 of the Federal Rules of Civil Procedure, to appear and testify on behalf of the defendants, before a Notary Public of the Commonwealth of Massachusetts, on March 14, 2007, at 10:00 A.M., at the office of Jeremy Silverfine, BRODY, HARDOON, PERKINS & KESTEN, LLP, One Exeter Plaza, Boston, Massachusetts, and to testify as to your knowledge, at the taking of the deposition in the above-entitled action. You are requested to bring with you the documents on the attached Schedule "A."

The requested records are to be used for the purposes of litigation. The foregoing counsel hereby certifies that the attached notice has been mailed this day to all counsel of record.

- * In lieu of appearing, we will accept certified copies of all documents requested in Schedule "A". If you have an objection to the documents requested or cannot provide this office with a complete copy of the documents, the deposition may be necessary.
- * If you have any questions, please contact Attorney Jeremy I. Silverfine upon receipt of this subpoena (617) 880-7100.

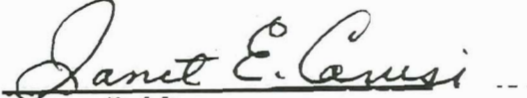
Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided.



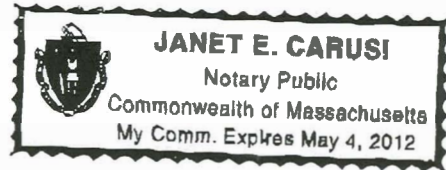
Attorney for Defendants
Jeremy I. Silverfine, BBO #542779
Brody, Hardoon, Perkins & Kesten, LLP
One Exeter Plaza
Boston, MA 02116

DATED:

2-15-07



Notary Public:
My Commission Expires



Office of the Inspector General

SCHEDULE "A"

1. Any and all documents including but not limited to reports, emails, correspondence relating to a meeting between Thomas Kelley and the Inspector General's Office on or about January 24, 2001 and any subsequent investigation.
2. An affidavit to certify that the attached records are a true and complete copy of the records concerning Thomas M. Kelley kept in the normal course of business. Said Affidavit should be signed under the pains and penalties of perjury by the Keeper of the Records.

Date of Service: 02/16/2007

RETURN OF SERVICE

KEEPER OF RECORDS

I this day summoned the within named **INSPECTOR GENERAL'S OFFICE, GREG SULLIVAN** to appear as within directed by delivering to **MARYBETH FARRELLY, CFO** in hand, to wit; No. **ONE ASHBURTON PLACE #1311** in the **SUFFOLK** District of said **BOSTON** an attested copy of the subpoena together with the **\$0.00** fees for attendance and travel.

Service and Travel **\$28.00**

Pd Witness **\$0.00**

Total **\$28.00**

NOTES/COMMENTS:

SIGNATURE

Kyle Caruso
Process Server & Disinterested Person